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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

NO. 717

THE OHIO NATIONAL LIFE INSURANCE COMPANY, a corporation,
LESLIE C. SMALL and MAY SMALL INGLESH,
Petitioners,

vs.

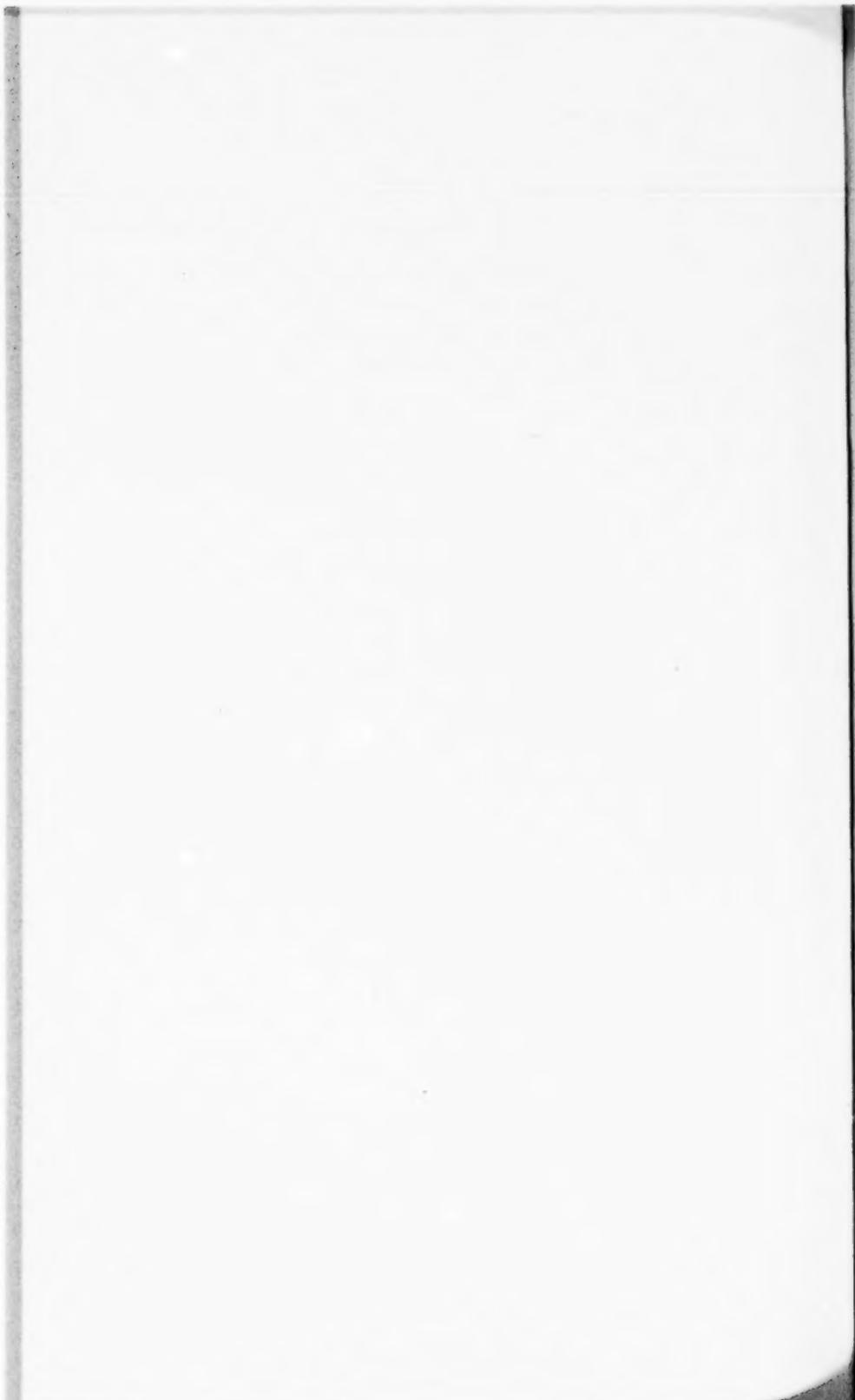
BOARD OF EDUCATION OF GRANT COMMUNITY HIGH SCHOOL
DISTRICT NO. 124 OF LAKE COUNTY, ILLINOIS; ARTHUR H.
FRANZEN, as treasurer of Grant Community High
School District No. 124 of Lake County, Illinois; ARTHUR
G. HIGHGATE, LADDIE RASKA, WILLIAM G. NAGLE, WILLIAM
TONYAN and CHARLES BRAINARD, as members of the Board
of Education of Grant Community High School District
No. 124 of Lake County, Illinois; and JAY B. MORSE, as
county clerk of Lake County, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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OF Counsel.



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No.

THE OHIO NATIONAL LIFE INSURANCE COMPANY, a corporation,
LESLIE C. SMALL and MAY SMALL INGLESH,
Petitioners,

vs.

BOARD OF EDUCATION OF GRANT COMMUNITY HIGH SCHOOL DISTRICT No. 124 of LAKE COUNTY, ILLINOIS; ARTHUR H. FRANZEN, as treasurer of Grant Community High School District No. 124 of Lake County, Illinois; ARTHUR G. HIGHGATE, LADDIE RASKA, WILLIAM G. NAGLE, WILLIAM TONYAN and CHARLES BRAINARD, as members of the Board of Education of Grant Community High School District No. 124 of Lake County, Illinois; and JAY B. MORSE, as county clerk of Lake County, Illinois,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, The Ohio National Life Insurance Company, a corporation, Leslie C. Small and May Small

Inglesh, jointly and severally pray for the issuance of a writ of certiorari herein directed to the Supreme Court of Illinois to review a certain final decision of said Supreme Court of the State of Illinois, said opinion and decision having been rendered and filed on May 16, 1944, and a petition for rehearing in said matter having been denied on September 14, 1944. A certified copy of the transcript of the record in this case, including the proceedings of the Appellate Court for the Second District of Illinois and the Supreme Court of Illinois, together with a supporting brief annexed hereto, are filed herewith in this court within three months after denial of said petition for rehearing by the said Supreme Court of the State of Illinois.

I.

Summary and Short Statement of the Matter Involved.

Grant Community High School District No. 124 of Lake County, Illinois, issued \$54,000 funding bonds to pay certain claims incurred by it on account of material and equipment furnished in the construction of a school house (R. 109-110). Petitioner, The Ohio National Life Insurance Company, of Ohio, is the owner of \$33,000 principal amount of said bonds, and Leslie C. Small and May Small Inglesh are jointly the owners of \$15,000 principal face amount of said bonds.

In the year 1932 a taxpayer of Lake County, Illinois, filed objections to the taxes extended against his property in order to pay the interest on said bonds. Upon hearing, the County Court of Lake County, Illinois, sustained the tax but on appeal to the Supreme Court of Illinois (February Term, 1934) the tax was held invalid (*People v. Orris*, 358 Ill. 408, 193 N. E. 213).

After this decision the General Assembly of the State of Illinois passed a validating act, effective July 1, 1935, by which the said bonds were sought to be validated (Appendix E). The validating act sought to cure two objections made by the Supreme Court of Illinois in that decision which were that the bonds had not been submitted to a vote, and second, that they were in excess of the statutory 2½ per cent indebtedness limit.

In 1936 petitioner, The Ohio National Life Insurance Company, brought suit against the Board of Education of Grant Community High School District in the District Court of the United States for the Northern District of Illinois, Eastern Division, in Case No. 45263, to recover judgment for past due interest on certain of said bonds (R. 104-106). In the complaint filed, the validating act was set up (R. 105) and by the sworn answer the validity of the bonds and the validating act were placed in issue (R. 106-107). The district court acquired jurisdiction of the parties, the subject matter and the cause. In June, 1936, after a full hearing before the court, judgment was entered in favor of petitioner, The Ohio National Life Insurance Company, for the face amount of all of the interest coupons then past due and sued upon (R. 107-108). The school district did not appeal from that judgment. Subsequently, it paid the judgment.

Thereafter, the school district paid all interest coupons maturing on or before September 1, 1939.

In 1939 a taxpayer of Lake County, Illinois, filed objections to the taxes extended against his property in order to pay the interest on these bonds. The County Court of Lake County, Illinois, sustained the tax, but on appeal to the Supreme Court of Illinois the tax was again held

invalid (*People v. Orvis*, 374 Ill. 536; 30 N. E. 2d 28), and the cause was remanded with directions that the taxpayer be given leave to file his objections. A petition for writ of certiorari to review that judgment was filed in this court and denied on the specific ground that the judgment was not final.

On March 1, 1940, the school district defaulted in the payment of interest coupons due on that date. Notwithstanding repeated demands by the holders of the bonds, the Board of Education and its treasurer refused to make any payments of interest as the coupons respectively became due after March 1, 1940.

On November 8, 1941, petitioner, The Ohio National Life Insurance Company, filed its complaint in the Circuit Court of Lake County, Illinois, making the respondents herein defendants and praying that the court issue a writ of mandamus against the school board and the treasurer to pay the interest coupons then past due from the money in the hands of said treasurer (which was sufficient for that purpose); to compel the county clerk of Lake County to make the necessary extension of taxes within the school district to pay the interest and principal of bonds then and thereafter to become due; to enjoin the Board of Education and the treasurer thereof from expending the moneys then in his hands (which had been levied and collected for the express purpose of paying part of these bonds or interest on them) for any purposes other than the payment of the interest and principal of said bonds; for a judgment for the principal plus interest of said bonds because of an anticipatory breach on the part of the said school district; and in the alternative for the recovery of a judgment for money had and received; and in the second alternative for the recovery of a judgment on

the doctrine of equitable subrogation. The complaint set forth the recovery of the judgment in the District Court of the United States for the Northern District of Illinois and averred that said determination of the district court was *res judicata* of the validity of the bonds.

Answers were filed on behalf of respondents and a counter-claim was filed by the Board of Education bringing in Leslie C. Small and May Small Inglesh as cross-defendants.

At the trial, the Circuit Court of Lake County, Illinois, on October 19, 1942, entered judgment in favor of petitioner, The Ohio National Life Insurance Company, in the sum of \$32,422.50 and in favor of Leslie C. Small and May Small Inglesh, collectively, in the sum of \$14,737.50, and in behalf of certain other cross-defendants for another sum. That court ignored the judgment of the District Court, but entered the foregoing judgments either on the doctrine of equitable subrogation or on the doctrine of money had and received.

An appeal was perfected by the Board of Education to the Appellate Court of Illinois for the Second District. Petitioners filed cross-errors in that Appellate Court, alleging *inter alia* that the Circuit Court of Lake County, Illinois, had ignored the judgment of the District Court of the United States in refusing to hold that that judgment was *res judicata* as to the validity of the bonds. Thereafter, on motion of petitioners, the cause was transferred to the Supreme Court of the State of Illinois on the ground that the validity of a statute was involved. In the Supreme Court of Illinois petitioners renewed their contention that the validity of the bonds had been adjudicated by the United States District Court, that such

judgment was *res judicata* of that question, and that said judgment was binding on the Board of Education (R. 162, 179).

On November 19, 1943, the Supreme Court of Illinois published an opinion allowing petitioners a partial recovery on the theory of equitable subrogation. The Board of Education then filed a petition for rehearing, which was allowed.

On May 16, 1944, the Supreme Court of Illinois, in the decision here sought to be reviewed, reversed the judgment of the Circuit Court of Lake County, Illinois, and remanded the cause with directions to enter a judgment. This decision held the bonds *pro tanto* valid and the balance invalid. The Supreme Court of Illinois refused to recognize the district court judgment and stated that "the Federal Court was not the forum where the constitutionality of the validating act could be finally determined" (R. 163). This petition for writ of certiorari is to procure a review of this decision of the Illinois Supreme Court.

II.

Basis on Which It Is Contended the Supreme Court of the United States Has Jurisdiction to Review the Judgment in Question.

The jurisdiction of this court is based on Section 237 (b) of the Judicial Code (28 U. S. C. A. 344 (b)) (Appendix F), which reads in part as follows:

"It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination * * * any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision

could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of or commission held or authority exercised under, the United States; * * *"

1. The decision of the Supreme Court of the State of Illinois in this case of *The Ohio National Life Insurance Co., etc., et al., Appellees and Cross-Appellants, v. Board of Education of Grant Community High School, etc., Appellant and Cross-Appellee*, as rendered May 16, 1944 (rehearing denied September 14, 1944), is a final judgment of the highest court of the State of Illinois in which a decision could be had. (See brief on finality of this judgment.) Said decision held that out of the sum of \$54,000.00 in bonds issued, \$10,701.51 were *pro tanto* valid and the balance were invalid, and also permitted recovery of \$956.32, being funds still held in the treasury of the district and never expended.
2. The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *The Ohio National Life Insurance Company v. Board of Education of Grant Community High School District No. 124 of Lake County, Illinois*, rendered June 30, 1936, which held that the bonds in question were valid, is a right specially set up by the petitioners under authority exercised under the United States. The said judgment was pleaded and a duly authenticated copy thereof was introduced in evidence before the Circuit Court of Lake County, Illinois (R. 107-108) (Appendix D).
3. Petitioners, Leslie C. Small and May Small Inglesh, aver that the judgment of the district court holding the bonds valid is likewise available to them because of the

identity of interest of said petitioners with the insurance company.

4. The petitioners introduced in evidence the District Court judgment holding the bonds valid (R. 107-108) and insisted on it in the Circuit Court of Lake County, Illinois; also relied on it in the Appellate Court of Illinois; and again relied on it in the Supreme Court of Illinois both on appeal by cross-errors and in the answer to the school district's petition for rehearing and in its petition for rehearing. Nevertheless, the Supreme Court of Illinois expressly refused to recognize said District Court judgment.

5. The failure of the Supreme Court of Illinois to give full faith and credit to said District Court judgment using language as follows, "The Federal Court was not the forum where the constitutionality of the validating act could be finally determined," is in violence of Revised Statutes 905, 28 U. S. C. A. 687 (Appendix C), which require that judgments of the Federal Courts in a state shall have the same dignity in the courts of that state as those of its own courts.

6. The failure of the Supreme Court of Illinois to recognize the judgment of the United States District Court rendered June 30, 1936, is contrary to the following decisions of this court: *Stoll v. Gottlieb* (1928), 305 U. S. 165, 83 L. ed. 104; *Deposit Bank of Frankfort v. Board of Councilmen of Frankfort*, 191 U. S. 499, 48 L. ed. 276; *Dupasquier v. Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City, etc. Co. v. Butchers Union, etc.*, 120 U. S. 141, 30 L. ed. 614; and *Motlow v. Missouri*, 295 U. S. 97, 79 L. ed. 1327.

III.**The Question Presented.**

1. May the Supreme Court of the State of Illinois hold a portion of certain bonds void in a suit brought by the bondholder by expressly refusing to recognize the validity of a prior judgment entered by a District Court of the United States in a suit between the same parties sustaining the validity of the same bonds where said District Court had jurisdiction of the parties, the subject matter and the cause?

IV.**Reasons Relied Upon for Allowance of the Writ.**

The Supreme Court of Illinois, in holding certain bonds partially void in a proceeding by bondholders against the Board of Education, expressly refused to recognize the validity and binding effect of a prior United States District Court final judgment holding the same bonds valid, entered in a case instituted by a bondholder against the school district and in which such district court had jurisdiction of the school district, the parties, the subject matter and the cause.

Wherefore, petitioners jointly and severally pray that a writ of certiorari be issued out of and under the seal of this court directed to the Supreme Court of the State of Illinois, sitting at Springfield, Illinois, commanding said court to send to this court on a day to be designated a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Illinois had in this cause to the end that this cause may be reviewed and determined by this court; that the judgment of the

District Court of the United States be decreed to be *res judicata* as to the validity of the bonds, that the Supreme Court of Illinois and the Circuit Court of Lake County, Illinois, be directed to permit petitioners' recovery of the full amount of the bonds, together with interest past due; and that your petitioners be granted such other and further relief as may seem proper.

WERNER W. SCHROEDER,

Attorneys for Petitioners.

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Of Counsel.

